

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

OSCAR CUNI,)	
)	
Petitioner,)	
)	Civil Action
vs.)	No. 06-3157-CV-S-FJG-H
)	
JOSEPH E. GUNJA, WARDEN, ¹)	
)	
Respondent.)	
)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus (Doc. # 1) was referred to the United States Magistrate for preliminary review (Doc. # 2) under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation (Doc. # 4) that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions (Doc. # 7) to the report and recommendation of the Magistrate in which he continues to assert that 28 U.S.C. § 2255 is inadequate and ineffective to test the validity of his detention, and that he is actually innocent of the offense for which he is seeking relief.

¹ The name of the current warden at the Medical Center has been substituted for that of the former warden.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, he has failed to establish that the 28 U.S.C. § 2255 remedy is inadequate or ineffective to address his complaints, and has failed to establish that his case comes under the "savings clause" of § 2255. The fact that petitioner may be procedurally barred from filing a § 2255 motion does not render the remedy itself inadequate; further, as addressed by the Magistrate in the report and recommendation, petitioner's allegations do not raise an issue of actual innocence. It is clear that petitioner has failed to demonstrate that this Court has jurisdiction under the provisions of 28 U.S.C. § 2241 to entertain his complaints.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions (Doc. # 7) filed herein be, and they are hereby, considered and overruled. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

Date: 02/07/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge